

Revised 05/01 WDNY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

AMENDED COMPLAINT**CASE 1:06-CV-00069-JTE**

**FORM TO BE USED IN FILING A CIVIL COMPLAINT IN FEDERAL COURT
(Non-Prisoner Context)**

PM 2:08

1. CAPTION OF ACTION

A. Full Name of Plaintiff: *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application or the only plaintiff to be considered will be the plaintiff who filed an application.*

CHARLES LYMAN BARRETT**-vs-**

B. Full Name(s) of Defendant(s) *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. Add a separate sheet, if necessary.*

1. **TOWN OF GENESEE, INC**4. **JOSH BLUHM (CM)**2. **ALYN HOLCOMB (CM)**5. **JILL ROULO (CM)**3. **MICHAEL FAULKNER (CM)**

6. _____

2. STATEMENT OF JURISDICTION, VENUE and NATURE OF SUIT*All of these sections MUST be answered*

Identify the basis for federal Court jurisdiction over your claim, such as that the United States government is a party to the action, all the parties reside in different states and therefore you claim diversity jurisdiction, or the claim presents a federal question or arises under federal law.

A. Basis of Jurisdiction in Federal Court: **Claim arises under Federal Law**

State why the Western District of New York is the proper venue for this action, such as that your claim arises in or the defendant resides in the 17 westernmost counties of New York State.

B. Reason for Venue in the Western District: **Both Plaintiff and defendant are located in Allegany, New York.**

Identify the nature of this action, such as that it is a civil rights claim, a personal injury or personal property (tort) claim, a property rights claim, or whatever it is.

C. Nature of Suit: **Property rights (copyright violation) claim**

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3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name of First Plaintiff: **Charles Lyman Barrett**

Present Address: **254 Main Street, PO Box 5**
Ceres, New York 14721

Name of Second Plaintiff: _____

Present Address: _____

DEFENDANT'S INFORMATION NOTE: To list additional defendants, use this format on another sheet of paper.

Name of First Defendant: **Town of Genesee, Inc et. al.**

Official Position of Defendant (if relevant): _____

Address of Defendant: **8246 Main Street, PO Box 40**
Little Genesee, New York 14754

Name of Second Defendant: _____

Official Position of Defendant (if relevant): _____

Address of Defendant: _____

Name of Third Defendant: _____

Official Position of Defendant (if relevant): _____

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes _____ No **XX**

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved: _____

Disposition (check those statements which apply):

_____ Dismissed (check the statement which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

5. STATEMENT OF CLAIM

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, just tell the story of what happened and do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

A. FIRST CLAIM: On (date of the incident) Nov and Dec 2000 town board meetings

defendant (give the name and (if relevant) the position held of each defendant involved in this incident) _____

The Genesee Town Board, Clara Robinson (Sup), Douglas Plotz (CM), Alyn

Holcomb (CM), Michael Faulkner (CM), Jill Roulo (CM)

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A. FIRST CLAIM (continued): In 1996 the Plaintiff, Charles Barrett, created a drawing of a map of the Wells Cemetery in the Town of Genesee, NY (**exhibit B**). Circular 1, Page 1 of the United States Copyright Office states "Copyright is secured automatically when the work is created". 17 USC 201 (a) states "INITIAL OWNERSHIP, - Copyright in a work protected under this title vests initially in the author or authors of the work." As an "original work of authorship" by the plaintiff, this work met the criteria set out in 17 USC 102 (a) (5) as subject matter of copyright. Copyright is defined in Circular 3, page 1 of the United States Copyright office as "a form of protection provided by the laws of the United States to authors of 'original works of authorship' ". Circular 3, page 1, first sentence states "The use of copyright notice is **no longer required** under US law. Circular 3, page 2, states For works first published on and after March 1, 1989, use of the copyright notice is optional. Circular 3, page 2 states "the 1976 Copyright Act defines publications as 'the distribution of copies or phonorecords of a work to the public by sale,, or by rental, lease, or lending ' ". 17 USC 401 (a) states "a notice of copyright may be placed on publicly distributed work". (b) Form of notice shall consist of the following elements: (1) the symbol © or the word copyright, (2) the year of first publication of the work, (3) the name of the owner of copyright of the work. Circular 3, page 5 states "The omission of notice does **not affect copyright protection**, and no corrective steps are required if the work was published on or after March 1, 1989. The plaintiff, Mr. Barrett, **did** include his name as the original author and the date on the Wells cemetery drawing (**exhibit A**) that Mr. Barrett lent Mr. Ed Sherman, then town supervisor. Mr. Sherman was having trouble getting the correct location to dig a grave . Mr. Sherman never returned this copy and it has been in the town office ever since only as a loan. This map has never been paid for by the town, if it had been paid for, the town could produce a bill showing payment. No such bill for Wells cemetery map exists. The Wells map was never a gift to the town. Other gifts to the town have been recorded in the town minutes as was the gift to Genesee of the small piece of land for the town park by Kenneth Dunbar. No such record for the Wells cemetery map as a gift exists. The new grave digger, Matt Faulkner had a copy of the Wells cemetery map made from the map at the town hall in his possession when he was digging a grave for Mrs. Grantier in late 2005. Matt will be subpoenaed for court to explain how he got his copy of the cemetery drawing. Matt has contracted for digging about a year now. The plaintiff, Mr. Barrett, realized that maps were being copied making the value of the copyright un-saleable and valueless after hours of hard work. The Plaintiff offered to sell the copyright and copies to the Town of Genesee at a reduced price at both the Nov 2005 and Dec 2005 town board meetings as it was just Christmas. The board refused to consider paying for the copy at the town hall

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and copies that they had helped produce.

The federal basis for this claim is: 17 USC 100 – 700, and United States Copyright Office Circular 1 and Circular 3 that are attached

State briefly what you want the court to do for you: Order the Town of Genesee to pay for the copy of Wells Cemetery that is in the town hall and also pay for the copy that was given to Matt Faulker. To pay at the same rate as was paid by other towns and private cemeteries, \$1,000 per acre which is a total of \$4,000 for the two Wells Cemetery maps. Order these maps and all other copies that the Town of Genesee has made, surrendered to the court. And also pay all court, legal costs, and all other court approved costs.

B. SECOND CLAIM *On (date of incident)* After Matt, the new grave digger began digging graves about a year ago.

defendant (give the name and (if relevant) position held. Presently unknown town official (John or Jane Doe)

did the following to me): In 1996 the Plaintiff, Charles Barrett, created a drawing of a map of the West Genesee Cemetery in the Town of Genesee, NY (**exhibit E**). Circular 1, Page 1 of the United States Copyright Office states "Copyright is secured automatically when the work is created". 17 USC 201 (a) states "INITIAL OWNERSHIP, - Copyright in a work protected under this title vests initially in the author or authors of the work." As an "original work of authorship" by the plaintiff, this work met the criteria set out in 17 USC 102 (a) (5) as subject matter of copyright. Copyright is defined in Circular 3, page 1 of the United States Copyright office as "a form of protection provided by the laws of the United States to authors of 'original works of authorship' ". Circular 3, page 1, first sentence states "The use of copyright notice is **no longer required** under US law. Circular 3, page 2, states For works first published on and after March 1, 1989, use of the copyright notice is **optional**. Circular 3, page 2 states "the 1976 Copyright Act defines publications as 'the distribution of copies or phonorecords of a work to the public by sale,, or by rental, lease, or **lending** ' ". 17 USC 401 (a) states "a notice of copyright **may** be placed on publicly distributed work". (b) Form of notice shall consist of the following elements: (1) the symbol © or the word copyright, (2) the year of first publication of the work, (3) the name of the owner of copyright of the work. Circular 3, page 5 states "The omission of notice does **not affect copyright protection**, and no corrective steps are required if the work was published on or after March 1, 1989. The Plaintiff, Charles Barrett, was mapping West Genesee cemetery when Mr. Sisson (former grave digger) who was working there asked to borrow a map to help with locating graves in that cemetery. The Plaintiff loaned him a copy of the map even though it was not completed and did not have all the information on it including the authors name and date. However the style of drawing by the Plaintiff is unique in that,

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first, it clearly shows which side of the gravestone the person is buried. Secondly, if the cemetery is vandalized, the tombstones can be placed back in their proper locations. The graves are individually placed in their exact locations and the name, DOB and DOD are written on each grave. Most of the time cemetery maps just show lots (exhibit F). Richburg cemetery buried a person in the wrong grave and ended up with a bill like this (exhibit G). One of the town supervisors asked Mr. Sisson to use his map and never returned it to him. This is the same copy that is in the Town hall (exhibit D). Mr. Sisson stated to the Plaintiff that Mrs. Lawton, the town clerk, had gotten him another copy a few years ago. Mr. Sisson will be subpoenaed for court to confirm this information. Another copy of the West Genesee map was made for Matt Faulkner, the new gravedigger within the last year.

The federal basis for this claim is: 17 USC 100 – 700, United States Copyright Office Circular 1 and Circular 3

State briefly what you want the court to do for you: Order the Town of Genesee to pay for the copy of West Genesee Cemetery that is in the town hall and also pay for the copy that was given to Matt Faulker at the same rate as was paid by other towns and private cemeteries, \$1,000 per acre which is a total of \$1,000 for the two West Genesee Cemetery maps. Order these maps and all other copies that the Town of Genesee has made, surrendered to the court by the defendant. Order defendant to pay the court fees for this action directly to the court. And also pay all legal costs, and all other court approved costs.

6. SUMMERY OF RELIEF SOUGHT

Creating a poem or a short story and instantly having it protected by the US copyright laws is a simple thing. But going to a cemetery, driving reference pipes, getting exact measurements, and compiling information requires hours of field work plus transportation to and from locations. It also requires an hour of computer input time for every hour of fieldwork on computer and printer-plotting equipment that has cost money over the years. Plaintiff also has the only computer discs of both drawings but wants an order from the court directing the defendant **not** to copy them and to immediately return them after examination. The Town of Genesee has shown itself to be untrustworthy violating the US copyright law. By handing out copies of these two maps to anyone who asked for them, The Town of Genesee has rendered the Plaintiffs value in these maps practically worthless. Why buy a map from the Plaintiff when anyone can go to the Genesee town hall and get one for next to nothing? Copying these maps is no different than pirating CD's. The Plaintiff deserves fair payment of \$5,000 plus costs for the copies in the town hall and for the copies the town made.

Do you want a jury trial? Yes _____ No XX

I declare under penalty of perjury that the foregoing is true and correct

Executed on 3/3/06

Charles Barrett
Signature of Plaintiff